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14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN JOSE DIVISION

17 ROBERT B. DE MARS and LORENA  
 18 BARRIOS, individually and on behalf of all  
 19 others similarly situated,

20 Plaintiffs,

21 v.

22 GOOGLE, INC.,

23 Defendant.

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 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

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CV 12-01382

CASE NO.:

CLASS ACTION

**COMPLAINT FOR DAMAGES,  
 EQUITABLE, AND INJUNCTIVE  
 RELIEF**

DEMAND FOR JURY TRIAL

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 25 Plaintiffs Robert B. DeMars and Lorena Barrios ("Plaintiffs"), by and through their attorneys,  
 26 bring this class action complaint on their own behalf and on behalf of all others similarly situated, to  
 27 obtain an injunction, damages, costs of suit, and attorneys' fees from defendant Google, Inc.

28  
 Complaint

1 (“Google”). Plaintiffs complain and allege, upon knowledge as to themselves and their acts, and  
2 upon information and belief as to all other matters, as follows:

3 **NATURE OF THE ACTION**

4 1. This is a nationwide class action against Google on behalf of all persons and entities  
5 in the United States (or, alternatively, in the State of California) that maintained a Google account  
6 from August 19, 2004 to February 29, 2012, and continued to maintain that Google account on or  
7 after March 1, 2012, when Google’s new privacy policy went into effect (the “Class”).

8 2. Plaintiffs also bring this nationwide class action against Google on behalf of a  
9 subclass of persons and entities in the United States (or, alternatively, in the State of California) that  
10 owned a device powered by Android from August 19, 2004 to February 29, 2012, and continued to  
11 own that device on or after March 1, 2012 (the “Android Subclass”).

12 3. Google is a technology company that provides free web products to consumers,  
13 including its widely used web-based email service, Gmail, which has been available since 2004 and  
14 allows consumers to send and receive emails, chat with other consumers through Google Chat  
15 (Google’s instant messaging service), and store email messages, contact lists, calendar entries, and  
16 other information on Google’s servers.

17 4. Google also offers consumers Google+, a social network where consumers can set up  
18 a profile and share text, links, photos and videos with friends through a variety of Google products,  
19 such as Google Reader (which allows consumers to subscribe to, read, and share content), Google  
20 Blogger (Google’s weblog publishing tool that allows consumers to share text, photos, and video),  
21 and Picasa (which allows consumers to edit, post, and share digital photos).

22 5. In addition, Google provides a variety of other products, including its well-known and  
23 globally utilized Google search engine (Google.com), as well as YouTube (where consumers can  
24 stream videos of interest to them); Google Docs (where consumers can create and edit documents  
25 online while collaborating in real-time with other consumers); and Google Maps (where consumers  
26 can view satellite images of locations all over the world, plan routes for traveling by foot, car, or  
27 public transport, and which has a GPS-like service that tracks the consumer’s location).

1           6.     Different Google products log and keep track of different information about the  
2 consumer. Among the information about consumers that is collected through Google's products and  
3 services is the consumer's first and last name; the consumer's home or other physical address  
4 (including street name and city or town); the consumer's current, physical location; the consumer's  
5 email address or other online contact information (such as a consumer's identifier or screen name);  
6 the consumer's IP address; the consumer's telephone number (including home and mobile telephone  
7 numbers); the consumer's list of contacts; the consumer's search history from Google's search  
8 engine; the consumer's web surfing history from cookies Google places on consumers' computers;  
9 and all of the consumer's posts in Google+.

10           7.     Although Google always had access to all of this information, the information  
11 collected in one Google product was not previously commingled with information collected during  
12 the consumer's use of other Google products. Thus, Google did not previously tie a consumer's  
13 Gmail account (and therefore his or her name and identity) to the credit card, banking, and brokerage  
14 websites that the consumer visited. In addition, if a consumer had a Gmail account, the content of  
15 the consumer's Gmail communications would not be used by Google to optimize search results  
16 when that consumer used Google's search engine.

17           8.     On March 1, 2012, however, Google announced that it had changed its privacy  
18 policy. As stated by Google, "The main change is for consumers with Google Accounts.... Our new  
19 Privacy Policy makes clear that, if you're signed in, we may combine information you've provided  
20 from one service with information from other services. In short, we'll treat you as a single user  
21 across all our products, which will mean a simpler, more intuitive Google experience."

22           9.     Thus, Google's new privacy policy does not allow consumers to keep information  
23 about a consumer on one Google service separate from information gathered about the consumer by  
24 other Google services.

25           10.    This change violates Google's prior privacy policies, which deceived and misled  
26 consumers by stating that Google would not utilize information provided by a consumer in  
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1 connection with his or her use of one service, with any other service, for any reason, without the  
2 consumer's consent.

3 11. It also violates consumers' privacy rights, allowing Google to take information from a  
4 consumer's Gmail account and Google+ account, which may have one expectation of privacy, and  
5 use it in a different context, such as to personalize results from the Google search engine, or to  
6 personalize advertisements viewed while the consumer is surfing the Internet, in which a consumer  
7 has an entirely different expectation of privacy.

8 12. Similar cross-referencing of billions of consumers' personal information previously  
9 resulted in an October 13, 2011 Consent Order with the Federal Trade Commission ("FTC"), in  
10 which the FTC found that Google deceptively claimed it would seek the consent of consumers  
11 before using their information for a purpose other than for which it was collected, and that Google  
12 had misrepresented consumers' ability to exercise control over their information. In announcing the  
13 Consent Order, Jon Leibowitz, Chairman of the FTC, stated, "when companies make privacy  
14 pledges, they need to honor them."

15 13. Here, billions of consumers across the globe are affected by Google's new privacy  
16 policy. Google's products and services have become a staple of society and are the base systems  
17 used by many other third parties, such as operating systems for cell phone manufacturers, and onsite  
18 search engines to power onsite search for third party publishers such as The New York Times.

19 14. For example, Google's Android operating system has been incorporated into cell  
20 phones built by multiple companies, including Motorola, LG, HTC, and Samsung.

21 15. Similarly, Google's Internet search product dominates, powering over 65% of  
22 Internet searches in the United States. Over one billion searchers use Google's Internet search  
23 engine (Google.com) each week; over 350 million consumers use Gmail; and YouTube streams over  
24 4 billion videos per day to consumers.

25 16. Google can offer these important, globally pervasive products free of charge to  
26 consumers due to its primary business model – advertising. Google obtains its advertising revenue  
27 by: (1) allowing advertisers to market their products on Google's products while consumers are  
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1 using them; and (2) selling and serving advertisements on third-party websites using its AdSense and  
2 AdMob products. Indeed, Google's advertising revenue was 97% of its profit last year.

3 17. Google's display advertising revenue is second in the United States only to Facebook.  
4 Facebook garners a larger market share of display advertising revenue because consumers that use  
5 Facebook set up, manage, maintain, and populate personal profiles with very specific information  
6 about themselves. This allows Facebook to deploy a more complete picture of the individual to most  
7 effectively target advertisers' messages only to qualified consumers, providing advertisers the best  
8 return on their investments, using information each consumer willingly supplies to Facebook.

9 18. Unlike Facebook, a holistic view of each consumer was unavailable to Google, and  
10 intended consumers were not easily identified by advertisers. Google previously targeted its  
11 advertising using bits and pieces of anonymous information garnered from each, discrete Google  
12 service that had more than 70 distinct privacy policies.

13 19. Thus, Google's new privacy policy is nothing more than Google's effort to garner a  
14 larger market share of advertising revenue by offering targeted advertising capabilities that compete  
15 with or surpass those offered by social networks, such as Facebook, where all of a consumer's  
16 personal information is available in one site.

17 20. However, the profiles on those social networking sites are created and managed by  
18 the consumers themselves, and the consumers have control over the personal information appended  
19 to their Facebook profiles. Thus, a consumer's expectation of privacy on Facebook is much  
20 different than his or her expectation of privacy when using Google products, where Google collects  
21 and aggregates information about the consumer without the consumer's consent, and which likely  
22 includes information that the individual would keep very private, and choose not to post, even on  
23 Facebook.

24 21. Indeed, given the privacy policies that were in effect when Plaintiffs and the Class  
25 and Android Subclass began using Google products, they did not expect that their separate, distinct  
26 use of each of Google's products for separate, discrete purposes would be combined, by Google, into  
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1 a single profile for each consumer that Google creates, maintains, and then uses to better target its  
2 consumers for advertising.

3 22. Further, Google's new privacy policy fails to either disclose or adequately explain  
4 that Google's primary purpose for aggregating this information is to garner a larger market share of  
5 advertising revenue.

6 23. Accordingly, contrary to Google's previous privacy policies, Google is now  
7 aggregating consumers' personal information without consumers' consent; has failed to provide a  
8 simple, effective opt-out mechanism; and Google's primary, undisclosed purpose for doing so is its  
9 own commercial advantage, private commercial gain, and financial benefit. Consumers are entitled  
10 to damages as a result.

### 11 JURISDICTION AND VENUE

12 24. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this  
13 action arises under federal statutes, namely the Federal Wiretap Act, 18 U.S.C. § 2511 and the  
14 Stored Communication Act, 18 U.S.C. § 2701, and the Computer Fraud and Abuse  
15 Act, 18 U.S.C. § 1030, and pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d) because  
16 the aggregated claims of the individual Class members exceed the sum or value of \$5,000,000,  
17 exclusive of interests and costs, and this is a class action in which more than two-thirds of the  
18 proposed Class, on the one hand, and defendant Google, on the other, are citizens of different states.

19 25. This Court has jurisdiction over Google because it maintains its principal  
20 headquarters in California; is registered to conduct business in California; has sufficient minimum  
21 contacts in California; or otherwise intentionally avails itself of the markets within California  
22 through the promotion, sale, marketing, and distribution of its products and services to render the  
23 exercise of jurisdiction by this Court proper and necessary. Moreover, Google's wrongful conduct  
24 (as described herein) emanates from California and foreseeably affects consumers in California.  
25 Most, if not all, of the events complained of below occurred in or emanated from Google's corporate  
26 headquarters located in Mountain View, California.  
27  
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## THE PARTIES

28. Plaintiff Lorena Barrios (“Barrios”) is a California resident. Barrios acquired her Gmail account in or about February of 2012, and continued to maintain her Gmail account on March 1, 2012. She was required to set up her Gmail account when she purchased her Verizon HTC, powered by Android, in or about February of 2012. She continued to own that mobile device on or after March 1, 2012. Like all members of the Class, Google aggregated Barrios personal information without her consent. Like all members of the Android Subclass, Barrios cannot prevent Google’s aggregation of her personal information without purchasing a new mobile device that is not powered by Android.

## Complaint

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1 this action by mail, email, or Internet publication, supplemented (if deemed necessary or appropriate  
2 by the Court) by published notice.

3 **COMMON QUESTIONS OF LAW AND FACT**

4 35. Common questions of law and fact exist as to all Class and Android Subclass  
5 members. These questions predominate over questions affecting only individual Class and Android  
6 Subclass members. These common legal and factual questions include but are not limited to the  
7 following:

8 a. Whether Google violated its previous privacy policy by merging data across products  
9 and services without consumers' consent;

10 b. Whether Google deceptively claimed that it would seek the consent of consumers  
11 before using their personal information for a purpose other than that for which it was collected;

12 c. Whether Google misrepresented the ability of consumers to exercise control over  
13 their personal information;

14 d. Whether Google misrepresented the extent of its compliance with the U.S.-EU Safe  
15 Harbor Framework by claiming that the company complied with the framework while violating the  
16 principles of Notice and Choice;

17 e. Whether Google's new privacy policy deceptively claims that it does not sell personal  
18 information to advertisers when advertisers can, and in fact do, purchase targeting from Google that  
19 uses consumers' personal information and Google profits as a result;

20 f. Whether Google's new privacy policy allows Google to profit from the deceptive use  
21 of consumers' personal information through acquisition of a larger share of advertising revenue;

22 g. Whether Google's opt-out practices for its new privacy policy are deceptive and  
23 misleading;

24 h. Whether consumers can effectively opt-out of Google's new privacy policy;

25 i. Whether Google should, alternatively, provide an opt-in measure for its new privacy  
26 policy;

27 j. Whether Android users can effectively opt-out of Google's new privacy policy;  
28

1 k. Whether Android users are entitled to the cost of purchasing a new device or  
2 reimbursement for the purchase of their current Android device;

3 l. Whether Google concealed or failed to disclose material information concerning its  
4 advertising practices and future plans for revenue growth;

5 m. Whether Plaintiffs and the Class and Android Subclass are entitled to injunctive  
6 relief; and

7 n. Whether Plaintiffs and the Class and Android Subclass are entitled to damages and  
8 attorneys' fees.

### 9 **TYPICALITY**

10 36. Plaintiffs' claims are typical of the claims of the Class and the Android Subclass.  
11 Plaintiffs and each member of the proposed Class maintained a Google product or service prior to  
12 February 29, 2012, and continued to maintain that product or service after March 1, 2012. Plaintiffs  
13 and each member of the Android Subclass owned a device powered by Android prior to February  
14 29, 2012, and continued to own that device after March 1, 2012.

15 37. In connection with their respective use of Google products, Plaintiffs and each Class  
16 and Android Subclass member were subject to the same disclosures and received the same privacy  
17 policy or terms and conditions at the time they began using Google products.

18 38. Google has used Plaintiffs' and all Class and Android Subclass members' personal  
19 information without their consent, inconsistent with Google's affirmative representations, and to  
20 Google's financial benefit which was undisclosed. Plaintiffs and all Class and Android Subclass  
21 members have sustained damages as a result, including losses directly caused by Google's actions as  
22 alleged herein.

### 23 **ADEQUACY OF REPRESENTATION**

24 39. Plaintiffs can and will fairly and adequately represent and protect the interests of the  
25 Class and Android Subclass, and have no interests that conflict with or are antagonistic to the  
26 interests of the Class or Android Subclass. Plaintiffs have retained attorneys competent and  
27 experienced in class action litigation.

28

**SUPERIORITY**

40. A class action is superior to any other available method for the fair and efficient adjudication of this controversy, since, as demonstrated above, common questions of law and fact overwhelmingly predominate over any individual questions that may arise.

41. The prosecution of separate actions by individual members of the Class or Android Subclass would create a risk of inconsistent or varying adjudications with respect to individual members of the Class and Android Subclass which would establish incompatible standards of conduct for Google, or adjudication with respect to individual members of the Class or Android Subclass which would, as a practical matter, be dispositive of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

42. Google has acted or refused to act on grounds generally applicable to all Class and Android Subclass members, thereby making appropriate any final judgment with respect to the Class and the Android Subclass as a whole.

**SUBSTANTIVE ALLEGATIONS****Google's Previous Privacy Policy Misrepresented How Google Would Use Consumers' Personal Information**

43. Google previously maintained more than 70 separate privacy policies for its products.

44. Google's previous privacy policies indicated, "When you sign up for a particular service that requires registration, we ask you to provide personal information. If we use this information in a manner different than the purpose for which it was collected, then we will ask for your consent prior to such use."

45. Additional statements in specific privacy policies further indicated that Google uses the consumer's personal information strictly in order to provide that particular product or service to the consumer, and that Google would not use it for any other purpose without the consumer's consent. For example, Google's prior Gmail privacy policy indicated, "Gmail stores, processes and maintains your messages, contact lists and other data related to your account in order to provide the service to you."

1           46.     Accordingly, Google's previous privacy policies indicated that Google would not use  
2 the consumer's personal information for any purpose other than that for which it was intended – to  
3 set up a specific account for a specific Google product.

4           47.     In addition, Google has always maintained – and continues to maintain – that it will  
5 not sell or share with third parties a consumer's personally identifying information without the  
6 consumer's consent.

7           48.     All consumers that signed up for Google products prior to March 1, 2012, when  
8 Google's new privacy policy took effect, were subject to these misrepresentations.

9           **Google's Prior Privacy Violations and Citations for Unfair and Deceptive Practices**

10           49.     Approximately two years ago, Google launched a social networking service called  
11 Google Buzz. Two of Google Buzz's key features were "Rich fast sharing" (which combined a  
12 variety of social media sources such as Picasa and Twitter into a single news feed), and "Automatic  
13 friends lists" (contacts that the consumer had emailed through Gmail were automatically added to a  
14 consumer's Google Buzz account). Thus, Google Buzz was Google's first attempt at cross-  
15 pollinating content across different Google products.

16           50.     Indeed, Google took information consumers provided for use within Gmail and used  
17 it to populate Google Buzz – a separate and discrete social network service.

18           51.     Google transferred this information despite the fact that, as described above, Google's  
19 prior privacy policies stated that Google would only use a consumer's Gmail information for the  
20 purpose of providing Gmail services, and would not use this information for any other purpose  
21 without the consumer's consent. Contrary to its terms of service, however, Google was using  
22 consumers' Gmail information to populate Google Buzz.

23           52.     Such cross-referencing of data harmed all consumers by violating their expectation of  
24 privacy in their emails; but was particularly harmful to clients of mental health professionals,  
25 attorneys, and finance professionals, as well as to the professionals themselves, who must promise  
26 confidentiality.

1           53. Not only did Google cross-index this information between products without the  
2 consumer's consent, but Google did not adequately disclose that Google was automatically making  
3 certain private information public through use of the Google Buzz product, and there was no clear  
4 way for a consumer to opt out of Google Buzz or to make the information non-public. Indeed,  
5 options for controlling the privacy of this information were very difficult to locate and confusing to  
6 consumers.

7           54. These unfair and deceptive trade practices resulted in an October 13, 2011 Consent  
8 Order between Google and the Federal Trade Commission ("FTC"). The FTC found that Google  
9 "failed to disclose adequately that consumers' frequent email contacts would become public by  
10 default."

11           55. The FTC also found that controls for limiting disclosure of personal information were  
12 "confusing and difficult to find...."

13           56. Further, the "options for declining or leaving the social network were ineffective."

14           57. Google had also "failed to give consumers notice and choice before using their  
15 information for a purpose different from that for which it was collected."

16           58. In announcing the Consent Order, Jon Leibowitz, Chairman of the FTC, stated,  
17 "when companies make privacy pledges, they need to honor them."

18           59. The FTC found that Google deceptively claimed that it would seek consumers'  
19 consent before using their information for a purpose other than that for which it was collected;  
20 Google misrepresented the consumers' ability to exercise control over their information; and Google  
21 misrepresented the extent of its compliance with the U.S.-EU Safe Harbor Framework by claiming  
22 that the company complied with the framework while violating the principles of Notice and Consent.

23           60. In addition to these findings, the Consent Order governs Google's current and future  
24 conduct. Part I of the Consent Order prohibits Google from misrepresenting: (a) the extent to which  
25 it "maintains and protects the privacy and confidentiality" of personal information; and (b) the extent  
26 to which it complies with the U.S.-EU Safe Harbor Framework. Part II of the Consent Order  
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1 requires Google to obtain “express affirmative consent” before “any new or additional sharing by  
2 [Google] of the Google user’s identified information with any third party....”

3 61. Google’s new privacy policy violates both of these provisions; commingles data in  
4 the same manner that resulted in the Consent Order; and consumers of Google’s products and  
5 services have been harmed as a result.

6 **Google’s New Privacy Policy Violates Google’s Prior Privacy Policies and**  
7 **Misrepresents and Fails to Disclose Its Primary Purpose**

8 62. On March 1, 2012, Google announced that changes to its privacy policies had been  
9 made and that it had consolidated more than 60 of its privacy policies down to just one document.

10 63. As stated by Google, “The main change is for users with Google Accounts.... Our  
11 new Privacy Policy makes clear that, if you’re signed in, we may combine information you’ve  
12 provided from one service with information from other services. In short, we’ll treat you as a single  
13 user across all our products, which will mean a simpler, more intuitive Google experience.”

14 64. Thus, contrary to representations made in Google’s prior privacy policies, Google’s  
15 new privacy policy does not allow consumers to keep information about a consumer of one Google  
16 service separate from information gathered from other Google services.

17 65. For example, consumers will no longer be able to keep the personal information they  
18 provided to Gmail, the Google email service, for simply that service. Instead, Google will be able to  
19 combine the information provided by the consumer on Gmail with other Google services, including  
20 Google+, Google’s social network service.

21 66. Thus, whereas previously information that was shared in email (such as Gmail) and  
22 on personal profiles (such as Google+) was contained within the context of the product the consumer  
23 was using, it is now available to all other products the consumer uses, and all of the products that  
24 that his or her contacts use.

25 67. For example, if a consumer conducts a Google search for restaurants in Munich, the  
26 search results will not only provide answers from the web, but will provide information from the  
27 consumer’s – as well as the consumer’s friends and contacts – Google accounts (Gmail, Google+,  
28 etc.). The result: the consumer will get web results, but will also get personal search results that



1 show posts, blogs, or photos that not only the consumer, but that the consumer and his or her friends  
2 and contacts, have shared across all other Google products, such as Google+.

3 68. In addition, Google can tie your web-surfing and search history to your Gmail and  
4 Google+ accounts and, therefore, build detailed and accurate targeting segments for advertising  
5 purposes. Thus, Google can use the consumer's actual sex and age to target that consumer for  
6 advertising, rather than its prior use of an anonymous profile created by algorithms that use web  
7 browsing history to target a consumer based upon a guess that the consumer is, for example, a  
8 female age 30-45.

9 69. Another example – instead of selling automobile advertisements to consumers Google  
10 marks as an “auto intender” merely based upon web-surfing and search history (which may include a  
11 12 year old boy that can't drive or purchase a vehicle), Google can now scan a consumer's emails  
12 and Google+ account, confirm that the consumer is of driving age, and see that the consumer wrote  
13 about shopping for a Mercedes-Benz, or include a picture from a friend's Google+ account in a  
14 Mercedes-Benz advertisement that shows the friend with her Mercedes-Benz vehicle. Google could  
15 then allow BMW to advertise its vehicles to the consumer, specifically trumpeting reviews that say  
16 BMW is better than Mercedes-Benz (for which BMW, in this example, would pay a premium).  
17 Thus, Google can provide its advertisers with data that is specific, verified, and more reliable, and  
18 advertisements can be personalized to each consumer's specific preferences, including implied  
19 endorsements from their friends on Google+.

20 70. Further, when the consumer is not signed in to a Google account, Google continues to  
21 aggregate data in an anonymous profile and customize each consumer's searches. Google stores up  
22 to 180 days of signed-out search activity, including queries and results you click in a cookie on a  
23 consumer's browser. When a consumer logs back into his or her Google account, that anonymous  
24 profile information can then be appended to that consumer's account, at which point that anonymous  
25 information could be used to customize results for that consumer on that computer or any other  
26 computer where the consumer is logged onto a Google account.

1           71. Indeed, every time a consumer uses a Google product, Google retains information  
2 about that use. Some of the information Google may have includes:

3           a. Your location: Google Maps, both mobile and desktop, shows your location  
4 on the map. On the desktop, Google Maps obtains your location from your web browser, through its  
5 geolocation feature. On your mobile, Google Maps obtains your location through the device.

6           b. Your search logs: Google stores data about your Google searches, including  
7 the search query, the time and date it was typed, the IP address and cookie of the computer it was  
8 entered from, and its browser type and operating system.

9           c. Your contacts: Google stores your Gmail contacts on its server.

10          d. Your personal identifying information: Your name, home address, age, and  
11 likes and dislikes can easily be obtained from your Google+ profile.

12          e. Your email content: Google scans the contents of the emails you send and  
13 receive on Gmail to target contextually related advertisements while you are using Google's Gmail  
14 product.

15          72. Prior to implementation of the Google's new privacy policy, the information Google  
16 obtained from each of its services would remain with the product that gathered the information.  
17 Now, all of the foregoing information is combined, creating a very personal, specific profile for each  
18 consumer, including not just an IP address, but some of the consumer's most personal identifying  
19 information.

20          73. Thus, contrary to the representations in Google's prior privacies pursuant to which  
21 Plaintiffs and the Class acquired their Google accounts, Google is now taking the personal  
22 information the consumer used to set up a specific account for a specific Google product, and  
23 combining that information with information submitted by that consumer on every Google product  
24 the consumer uses without the consumer's consent.

25          74. Not only has Google done so without each consumer's consent; it has not provided  
26 consumers with an easy, efficient, or effective way to opt-out of Google's co-mingling and cross-  
27 pollination of data. While Google has made it very easy to universally merge data across product  
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1 lines, it has not made it easy to opt out – consumers must manage their privacy settings for each  
2 Google product they use; a universal opt-out function is not available. Google product users have  
3 the ability to minimize the accessibility of some of their data, but there are significant obstacles to  
4 doing so, and complete privacy cannot be accomplished.

5 75. Indeed, Google has misrepresented that the impetus for the consolidation, stating that  
6 it is to provide “a simpler, more intuitive Google experience.” However, the primary reason for  
7 Google’s privacy change is to use consumers’ personal information to grow profits by achieving a  
8 larger market share of advertising revenue. Thus, Google has no incentive to provide an effective  
9 opt-out function, or, in the alternative to provide an opt-in function.

10 76. Perhaps it is best stated by the 35 Attorneys General that sent a letter dated February  
11 22, 2012 to Google opposing implementation of Google’s new privacy policy,

12 Your company claims that users of Google products will want their personal  
13 information shared in this way because doing so will enable your company to provide  
14 them with a “simple product experience that does what you need, when you want it  
15 to,” among many other asserted benefits. If that were truly the case, consumers  
16 would not only decline to opt out of the new privacy policy, but would freely opt *in* if  
17 given the opportunity. Indeed, an “opt-in” option would better serve current users of  
18 Google products by enabling them to avoid subjecting themselves to the dramatically  
19 different privacy policy without their affirmative consent. Unfortunately, Google has  
20 not only failed to provide an “opt-in” option, but has failed to provide meaningful  
21 “opt-out” options as well.

22 *available at* <http://epic.org/privacy/google/20120222-Google-Privacy-Policy-Final.pdf>.

23 77. Further, studies show that an overwhelming number of consumers do not want to  
24 receive advertisements targeted based on behavior, or search results based on their prior activity.

25 78. According to a March 9, 2012 study released by the Pew Internet & American Life  
26 Project, 800 Web users were asked how they would feel about a search engine remembering their  
27 prior queries and using that data to personalize future results. Seventy-three percent of the  
28 respondents said they “would not be okay with it” because they felt it was an invasion of privacy.

79. The study also asked 1,700 Web users how they felt about receiving targeted  
advertisements. Sixty-eight percent of respondents were “not okay with it” because they do not want

1 to be tracked and profiled. Only 28% said they were “okay with it” because they received ads and  
2 information relevant to their interests.

3 80. These results are consistent with a study released in September of 2009 by professors  
4 at the University of Pennsylvania’s Annenberg School for Communication and the University of  
5 California, Berkeley School of Law, which found that two out of three Web users don’t want  
6 customized ads.

7 81. Despite consumers’ opinions to the contrary, Google’s new privacy policy makes it  
8 much easier for Google to track its product users’ activity for the purpose of serving up personalized  
9 advertisements.

10 82. In the past, Google’s search results may not always give consumers what they were  
11 looking for because, inevitably, there is an element of guesswork involved – the search engine did  
12 not know your personal identity (including age your age and location) or other preferences. For  
13 example, if – prior to implementation of the new privacy policy – a consumer had typed the term  
14 “Chelsea” into Google’s search engine, the search engine may not have known whether to provide  
15 results for neighborhoods in Manhattan or London. At the same time, the advertising that was paired  
16 with the results may not have been accurate – should the consumer be targeted for advertisements for  
17 restaurants in Manhattan or London?

18 83. However, with Google’s new privacy policy, Google is able to cross-reference the  
19 information it has about you from other Google products, such as Google Maps. Thus, Google may  
20 learn from a consumer’s prior use of Google Maps that he or she is located in Manhattan, and could  
21 then provide results that contain information about restaurants in Chelsea, Manhattan.

22 84. By providing search results that are tailored to the consumer, Google can keep  
23 consumers engaged and, therefore, using its products and services for longer periods of time. If  
24 consumers are using its products longer, Google can sell more advertising space because the  
25 advertising displays have more time to rotate.

26 85. Google can also use this information to tailor the advertising to its intended user – if  
27 the consumer is located in Manhattan, it can advertise restaurants located in Manhattan – thus  
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1 optimizing marketing for its advertisers, resulting in Google's ability to charge more for  
2 advertisements.

3 86. Thus, optimizing search results (1) keeps consumers engaged longer, and longer  
4 engagement allows Google to sell and deliver more advertisements (engagement creates inventory);  
5 and (2) allows Google to display advertising that is specifically targeted to intended users, rather  
6 than the masses (which raises the likelihood that the consumer will "click" on the advertisement).  
7 Google can, therefore, sell more advertisements *and* command a higher price for them, by delivering  
8 more intended users to its advertisers.

9 87. For example, marketers could tap into a consumer's YouTube browsing history when  
10 targeting search advertisements on Google.com, and recommend golfing instruction videos and  
11 advertisements for golf courses and vacations to a signed-in YouTube, Gmail, or Google+ consumer  
12 who recently searched for "golf" on Google.com.

13 88. Better recommendations leading consumers to more relevant content will presumably  
14 keep them inside the Google ecosystem longer and potentially help Google begin to catch up to  
15 Facebook in terms of time spent lingering on their respective sites, and, therefore, in terms of  
16 revenue from advertising from the additional advertising inventory that is created by keeping the  
17 consumer on the site longer.

18 89. Thus, as long as the consumer is signed-in to any Google account, such as Gmail or  
19 Google+, Google will now aggregate all of your activity under one profile on any other Google  
20 product you utilize. It will merge data from each of its platforms and services (including Android  
21 devices), aggregating the content of the emails you draft, the content of emails you receive, the  
22 searches you run using Google Search, the locations you search using Google Maps, the articles you  
23 read and upload to Google+; it is all combined to create a detailed profile of the consumer. The  
24 consumer's name and personal information are associated with the Gmail or Google+ account  
25 (because the consumer provides that information to Google when he or she originally creates those  
26 accounts) and the consumer's identity is now associated with the whole spectrum of the consumer's  
27 activity.

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1           90. Google can sell advertisers that ability to target specific, intended consumers, rather  
 2 than the masses. Google has access to everything about the consumer – including his or her name,  
 3 location, likes, dislikes, interests; up to and including places he or she has made reservations for  
 4 dinner that very night. The value in Google’s ability to create a clear, well-rounded picture of the  
 5 consumer – as opposed to its previous privacy policy that created largely anonymous puzzle pieces  
 6 that could not be linked together (and were not always accurate) – is unquestionably significant. It is  
 7 also unquestionably invasive, and is being done in violation of its previous privacy policies pursuant  
 8 to which the Class and Android Subclass agreed to utilize Google’s products, and without the  
 9 consumer’s consent or an effective ability to opt-out. Indeed, the new unified privacy policy is  
 10 emblematic of what former Google executive James Whittaker has called Google’s recent shift from  
 11 “innovation factory” to “advertising company.” (James Whittaker, “Why I left Google.” March 13,  
 12 2012, *available at* [http://blogs.msdn.com/b/jw\\_on\\_tech/archive/2012/03/13/why-i-left-google.aspx](http://blogs.msdn.com/b/jw_on_tech/archive/2012/03/13/why-i-left-google.aspx).)

13           91. Furthermore, consumers of devices powered by Google’s Android platform are  
 14 automatically, and permanently, “logged-in” for purposes of aggregation of their personal  
 15 information. They have no way to opt-out, and cannot avoid this unauthorized invasion of privacy  
 16 unless they replace their Google Android device with a non-Android device, which would cost  
 17 hundreds of dollars.

18           92. Again, the issue is best stated by the 35 Attorney Generals in their February 22, 2012  
 19 letter to Google objecting to Google’s new privacy policy:

20           Even more troubling, this invasion of privacy is virtually impossible to escape for the  
 21 nation’s Android-powered smartphone users, who comprise nearly 50% of the  
 22 national smartphone market. For these consumers, avoiding Google’s privacy policy  
 23 change may mean buying an entirely new phone at great personal expense. No doubt  
 24 many of these consumers bought an Android-powered phone in reliance on Google’s  
 25 existing privacy policy, which touted to these consumers that “We will not reduce  
 your rights under this Privacy Policy without your explicit consent.” That promise  
 appears not to be honored by the new privacy policy. Given the way the new privacy  
 policy is being implemented, i.e., without genuine opt-put options and without pre-  
 purchase notice to users of Android-powered smartphones, it seems these users can  
 only register non-consent by abandoning their phones altogether.

26           *available at* <http://epic.org/privacy/google/20120222-Google-Privacy-Policy-Final.pdf>.



1           93. Thus, Google's increased optimization comes at a significant cost to privacy,  
2 consumers' rights, and consumers' wallets. What a consumer may discuss with friends on Gmail,  
3 may be different than that which he or she would search on a computer at work. By commingling  
4 data (including searches, locations, and email contacts), and tying it to a specific Gmail account or  
5 Google+ account (and therefore a specific consumer), the consumer's personal information is no  
6 longer tied to the account; it is tied to an overarching profile in that person's name, that is regularly  
7 appended through use of or interaction with Google products. That person no longer remains  
8 anonymous where he or she intended to remain anonymous. The various portions of each person's  
9 life are no longer separate and given the expectation of privacy associated with each of them; they  
10 are no longer pieces to an impossible puzzle; they are pieces that can be, and as of March 1, 2012  
11 have been, linked to create a clear picture of that consumer.

12           94. Google's top advertising executive, Susan Wojcicki, has best described how Google's  
13 new privacy policy will raise Google's advertising revenues. Ms. Wojcicki stated at a Search  
14 Marketing Expo conference that Google's biggest innovations over the next several years will be in  
15 personalized search results and advertisements. She also stated that Google+ was the gateway to  
16 "the next generation of Google products," which will be "different because our users are logged in  
17 and are telling us something about themselves." At the conference, Wojcicki described how  
18 different users typing in the same "best vacations" search would get different results – her results  
19 would be more family friendly, because Google would have been able to aggregate information  
20 about her and determined that she had a family. This is the precise, controversial conclusion that  
21 Google's new privacy policy allows Google to make by analyzing a consumer's combined usage  
22 data.

23           95. She also stated that she hopes Google will reach a point where it provides only  
24 advertisements that consumers "want to see." She did not mention the windfall of profits Google  
25 will achieve by using the consumer's personal information to deliver such targeted advertising,  
26 without the consumer's consent.

1           96. As a result of the foregoing, and in addition to the relief requested below, Google has  
2 violated Part I of the Consent Order by: (a) misrepresenting the extent to which it maintains and  
3 protects the privacy and confidentiality of covered information; and (b) misrepresenting the extent to  
4 which it complies with the U.S.-EU Safe Harbor Framework. Google is also in violation of Part II  
5 of the Consent Order by failing to obtain affirmative consent from consumers prior to sharing their  
6 information with third parties.

7           97. Google has also misrepresented, and failed to disclose, its primary purpose for  
8 implementing its new privacy policy – to monetize its unauthorized use of consumers’ personal  
9 information by garnering a larger market share of advertising revenue, for its own financial benefit.

10                           **TOLLING OF THE STATUTE OF LIMITATIONS**

11           98. The ability to opt-out of Google’s new privacy policy is ineffective, latent and self-  
12 concealing. Accordingly, exercising reasonable care, Plaintiffs, the Class, and the Android Subclass  
13 members cannot effectively opt-out of Google’s new privacy policy.

14           99. By suppressing the dissemination of truthful information regarding the intended  
15 purpose of the privacy policy, and the ability to opt-out, Google has actively foreclosed Plaintiffs,  
16 the Class, and Android Subclass members from opting-out.

17           100. By reason of the foregoing, the claims of Plaintiffs and other Class and Android  
18 Subclass members are timely under any applicable statute of limitations (as tolled by the filing of  
19 this class action petition) pursuant to the discovery rule and the doctrine of fraudulent concealment.

20           101. Google has been aware of the deceptive nature of its prior privacy policies for several  
21 years.

22           102. Despite this knowledge and awareness, Google continues to aggregate consumers’  
23 personal data without their consent and a meaningful ability to opt-out.

24           103. Google’s failure to obtain consumers’ consent, failure to provide a meaningful opt-  
25 out mechanism, failure to disclose its primary purpose, and failure to abide by the Consent Order,  
26 was and is willful, wanton, malicious, outrageous, and was and continues to be undertaken in  
27  
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1 deliberate disregard of, or with reckless indifference to, the rights and interests of Plaintiffs and the  
2 Class and Android Subclass members.

3 **COUNT I**

4 **VIOLATIONS OF THE FEDERAL WIRETAP ACT**

5 **18 U.S.C. § 2511**

6 **(For all Class members)**

7 104. Plaintiffs reallege and incorporate by reference each and every allegation set forth  
8 above as though fully set forth herein.

9 105. The Federal Wiretap Act, as amended by the Electronic Communications Privacy Act  
10 of 1986, prohibits the willful interception of any wire, oral or electronic communication.

11 106. 18 U.S.C. § 2520(a) provides a private right of action to any person whose wire, oral,  
12 or electronic communication is intercepted.

13 107. Google is intercepting and aggregating the personal information of Plaintiffs, and all  
14 others similarly situated, and is placing cookies on its users' computers that intercepted records of  
15 Google users' Internet communications even after the user has logged out of his or her Google  
16 accounts.

17 108. Neither Plaintiffs nor members of the Class or Android Subclass consented, nor were  
18 they aware that Google was violating its own privacy policy, and tracking and aggregating  
19 consumers' Internet use across Google platforms, creating a single profile of each consumer that  
20 aggregates all information about the consumer across Google platforms – even after logging off of  
21 Google accounts, and then appending the aggregated information to consumers' Google accounts  
22 when they log back in.

23 109. The data Google is intercepting and aggregating are “communications” within the  
24 meaning of the Wiretap Act.

25 110. Google intentionally and willfully intercepts the electronic communications of its  
26 consumers and intentionally and willfully aggregates consumers' personal information for its own  
27 financial benefit.  
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111. Plaintiffs and the Class are persons whose electronic communications were intercepted within the meaning of Section 2520.

112. Section 2520 provides for preliminary, equitable and declaratory relief, in addition to statutory damages of the greater of \$10,000 or \$100 a day for each day of violation, actual and punitive damages, reasonable attorneys' fees, and disgorgement of any profits earned by Google as a result of the above-described violations.

## **COUNT II**

### **VIOLATIONS OF THE STORED ELECTRONIC COMMUNICATIONS ACT**

**18 U.S.C. § 2701**

**(For All Class Members)**

113. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

114. The Stored Electronic Communications Act ("SECA") provides a cause of action against a person who intentionally accesses without authorization a facility through which an electronic communication service is provided, or who intentionally exceeds an authorization to access that facility and thereby obtains, alters or prevents authorized access to a wire or electronic communication while it is in storage in such a system.

115. "Electronic Storage" is defined in the statute to be "any temporary, immediate storage of a wire or electronic communication incidental to the electronic transmission thereof."

116. Google's new privacy policy intentionally exceeds its authorized access to consumers' electronic communications stored on Google's systems, thus violating the SECA.

117. Google also intentionally places cookies on consumers' computers that access members' stored electronic communications without authorization, thus violating the SECA.

118. Plaintiffs and the other Class members were, and continue to be, harmed by Google's violations, and are entitled to statutory, actual and compensatory damages, injunctive relief, punitive damages and reasonable attorneys' fees.

**COUNT III**

**VIOLATIONS OF THE COMPUTER FRAUD ABUSE ACT**

**18 U.S.C. § 1030**

**(For All Class Members)**

119. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

120. Google intentionally accessed a computer used for interstate commerce or communication, without authorization or by exceeding authorized access to such a computer, and by obtaining information from such a protected computer.

121. Google knowingly caused the transmission of a program, information, code or command and as a result caused a loss to one or more persons during any one-year period of at least \$5,000 in the aggregate.

122. Plaintiffs, the Class, and the Android Subclass have also suffered a violation of the right of privacy as a result of Google's knowing actions.

123. Google has thus violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

124. Google's unlawful access to Plaintiffs' and the Class and Android Subclass members' computers and communications has caused irreparable injury. Unless restrained and enjoined, Google may continue to commit such acts. Plaintiffs' remedies at law are not adequate to compensate for these inflicted and threatened injuries, entitling Plaintiffs and the Class and Android Subclass to remedies including injunctive relief as provided by 18 U.S.C. § 1030(g).

**COUNT IV**

**VIOLATION OF CALIFORNIA'S RIGHT OF PUBLICITY STATUTE**

**Civil Code § 3344**

**(For All Class Members)**

125. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

126. California's Right of Publicity Statute, California Civil Code § 3344, *et seq.*, protects persons from the unauthorized appropriation of the person's identity by another for commercial gain.

127. During the Class period, Google knowingly used Plaintiffs' and the Class' names, photographs, or likenesses for advertising, selling, or soliciting purposes.

128. Google did not have Plaintiffs' or the Class' consent to do so.

129. Plaintiffs received no compensation or other consideration for Google's use thereof.

130. Plaintiffs and the Class were harmed by Google's actions.

131. The advertisements were not used in conjunction with news, public affairs, a sports broadcast or account, or a political campaign.

132. Each incident is a separate and distinct violation of California Civil Code § 3344.

133. Plaintiffs and the Class therefore seek injunctive relief, and other such preliminary and other equitable or declaratory relief as may be appropriate.

134. Plaintiffs and the Class also seek remedy as provided for by California Civ. Code § 3344(a) in the amount equal to the greater of \$750 per incident, or the actual damages suffered as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages, as well as punitive damages, attorneys' fees and costs, and any other relief as may be appropriate.

#### **COUNT V**

#### **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW** **Cal. Bus. & Prof. Code § 17200, et seq.** **(For All Class Members)**

135. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

136. As described above, Google's nonconsensual use of Plaintiffs' and the Class' personal information violates the Federal Wiretap Act, the Stored Electronic Communications Act, and the Computer Fraud Abuse Act.

137. As described herein, Google's nonconsensual use of Plaintiffs' and the Class' names, photographs, and likenesses is also a violation of California's Right to Publicity Statute, Civil Code § 3344.



1           138. These violations satisfy the “unlawful” prong of the Unfair Competition Law  
2 (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*.

3           139. Google also violated the “fraudulent” prong of the UCL by intentionally and  
4 knowingly misrepresenting that Plaintiffs and the Class have full control to prevent their appearance  
5 in advertising on Google’s products. Google did so with the intent of getting members to register  
6 for, and to use, its products and services, and to participate in advertisements even while Google  
7 knew there was no meaningful way to prevent one’s name, photograph, likeness, or identity from  
8 being used to target advertising or appearing as an endorsement in advertisements.

9           140. Moreover, Google intentionally misrepresented Plaintiffs’ and the Class’ ability to  
10 prevent use of his or her appearance and personal information in advertisements so Google could  
11 enjoy substantial profits by having users unwittingly appear in such advertisements.

12           141. Plaintiffs and the Class justifiably relied upon those misrepresentations when  
13 deciding to sign up for and use Google’s products and services, and when using those services to run  
14 searches for their interests, exchange emails with friends, edit and share their pictures, stream videos,  
15 and search for directions. Plaintiffs suffered damages of deprivation of money earned by the  
16 misrepresentations, in an amount to be proven at trial.

17           142. Google also violated the fraudulent prong of the UCL by knowingly and intentionally  
18 failing to seek and acquire informed consent regarding the changes to its privacy policy.

19           143. Google violated the “unfair” prong of the UCL by leading Plaintiffs and the Class to  
20 believe that they could opt out of advertising endorsements, encouraging Plaintiffs and the Class to  
21 make Google products indispensable to their lives, and then using Plaintiffs’ and the Class’ personal  
22 information in a manner in which Plaintiffs and the Class cannot effectively opt out.

23           144. Google violated the “unfair” prong of the UCL by intentionally profiting from the  
24 nonconsensual endorsements extracted from Plaintiffs and the Class without sharing those profits  
25 with Plaintiffs and the Class.

26           145. Google’s unfair, deceptive, and fraudulent practices originated from California.  
27 Decisions concerning Google’s privacy policies and advertising decisions were made in California.  
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**COUNT VII**

**COMMON LAW TRESPASS TO CHATTELS**  
**(For the Class)**

155. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

156. A trespass to chattel is committed by intentionally intermeddling with a chattel in the possession of another.

157. A trespass to chattel is also be committed by fraud, through a misrepresentation to induce another to voluntarily dispossess himself of a chattel.

158. Google has committed a trespass to chattels by intentionally intermeddling with Plaintiffs' personal information.

159. In addition, Google has committed a trespass to chattels by misrepresenting the terms upon which it would use Plaintiffs' and the Class' personal information to induce Plaintiffs and the Class to voluntarily use Google's products.

160. Plaintiffs and the Class were damaged by Google's actions.

**COUNT VIII**

**UNJUST ENRICHMENT**  
**(For All Class Members)**

161. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

162. Plaintiffs and the Class conferred a benefit on Google without Plaintiffs' and the Class members' consent, namely, to access their wire or electronic communications over the Internet, aggregate them to create a personal profile for Google consumers, and using that information to increase its advertising revenue.

163. Upon information and belief, Google realized such benefits through either sales to third parties and/or greater knowledge of its own consumers' behavior without their consent.

164. Acceptance and retention of such benefit without Plaintiffs' and the Class members' consent is unjust and inequitable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray the Court to enter judgment against Google and in favor of Plaintiffs, on behalf of themselves and the Class and Android Subclass members, and to award the following relief:

A. Certifying this action as a nationwide class action (or in the alternative as a California class action), certifying Plaintiffs as representatives of the Class and the Android Subclass, and designating his counsel as counsel for the Class and Android Subclass;

B. Tolling the statute of limitations pursuant to the discovery rule and the doctrine of fraudulent concealment;

C. Awarding the Plaintiffs and each Class and Android Subclass member actual and compensatory damages for the acts complained of herein;

D. Awarding the Plaintiffs and each Class and Subclass member treble damages for the acts complained of herein;

E. Awarding the Plaintiffs and each Class and Subclass member costs and attorneys' fees, as allowed by law, and/or awarding counsel for the Class and Android Subclass attorneys' fees;

F. Awarding the Plaintiffs and each Class and Android Subclass member statutory pre-judgment interest;

G. For legal and equitable relief as this Court may deem just and proper; and

H. Granting such other or further relief as may be appropriate under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury as to all issues so triable.

Dated: March 20, 2012

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